

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

BONNA LEE SELF, as Personal  
Representative of the Estate of  
W.J. SELF, Deceased,

Plaintiff,

vs.

Case No. 2004-3564-NH

ST. JOSEPH MERCY OF  
MACOMB - WEST, An Affiliated  
Hospital of TRINITY HEALTH  
CORPORATION, a Foreign Corporation,  
NANDALUR N. REDDI, M.D.;  
CHANDRAVADAN A. PATEL, M.D.,  
FRIEDRICH DUTKA, M.D.,  
FRIEDRICH DUTKA, M.D., P.C., a  
Michigan Corporation, and  
ANIL THOMAS, M.D.,  
Jointly and Severally,

Defendants.

OPINION AND ORDER

This matter is before the Court on defendant Anil Thomas, M.D.'s motion for summary disposition or partial summary disposition pursuant to MCR 2.116(C)(10). Alternatively, Dr. Thomas requests an evidentiary hearing pursuant to MRE 702.

I.

In pertinent part, plaintiff alleges that on or about October 3, 2002 and October 8, 2002, her decedent presented himself to the care of Dr. Thomas, a specialist in internal medicine, with a subspecialty in pulmonary disease. She alleges that Dr. Thomas breached his duty of care by conduct which included, but was not limited to: failing to follow up on the October 5, 2002



abnormal CT scan of decedent's abdomen prior to discharge, failing to address the trauma to decedent's spleen prior to discharge on October 7, 2002, failing to obtain a CT scan of the abdomen and pelvis and order a follow up hemoglobin test after October 5, 2002, and failing to communicate to other physicians, decedent, and decedent's family that decedent had a potentially life-threatening injury prior to discharge on October 7, 2002. Further, she alleges that Dr. Thomas's negligence caused her decedent to sustain brain damage that ultimately resulted in death.

In the motion at hand, Dr. Thomas first contends that plaintiff cannot meet her burden of proving that he had acted negligently. He therefore argues that the allegations against him should be dismissed, in whole or in part. Alternatively, he requests that the Court conduct an evidentiary hearing to determine the reliability of plaintiff's expert.

Conversely, plaintiff asserts that there is an outstanding factual dispute as to the level of care that Dr. Thomas provided to decedent. Moreover, she disputes that an evidentiary hearing is necessary.

## II.

In reviewing a motion brought under MCR 2.116(C)(10), the trial court must consider the pleadings, as well as any affidavits, depositions, admissions, and documentary evidence submitted by the parties. The evidence should be construed in the light most favorable to the party opposing the motion. The motion should be granted if the evidence establishes that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. MCR 2.116(G)(4)-(5); *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). It is not sufficient for the non-movant to promise to offer factual support for his position at trial.

*Smith, supra*, at 457-458 n 2. Instead, the adverse party must produce evidence demonstrating that there is a genuine issue of material fact. MCR 2.116(G)(4).

### III.

The evidence shows that Dr. Thomas ordered a CT scan of decedent's abdomen and pelvis on October 4, 2002. In paragraph 7 of her answer to Dr. Thomas's motion, plaintiff admits that: the CT scan was taken on October 4, 2002, while Dr. Thomas was away for the weekend, Dr. DeLeon covered for Dr. Thomas, and there is no evidence that the radiologist who reviewed the CT scan contacted Dr. Thomas or Dr. DeLeon. When Dr. Thomas returned to work on October 7, 2002, the CT scan was lost and decedent had been discharged by another doctor. Even plaintiff's own expert witness, Dr. Hirsch, did not fault Dr. Thomas for the discharge. *See* Dr. Hirsch's deposition at 42. Contrary to plaintiff's position, Dr. Thomas had advised the covering physician, Dr. DeLeon, that tests had been ordered inasmuch as Dr. DeLeon had been aware that that a CT scan had been ordered. *See* paragraph 6 of Dr. DeLeon's affidavit. Finally, the Court finds that plaintiff cannot rely on Dr. Hickey, a general surgeon, to establish the standard of care since Dr. Hickey is not a pulmonary specialist.

In reviewing all of the available evidence in the light most favorable to plaintiff, the Court concludes that Dr. Thomas is entitled to the entry of summary disposition as to the entirety of the claims against him. MCR 2.116(C)(10). *Smith, supra*. Under these circumstances, an evidentiary hearing is not required.

### IV.

For the reasons set forth above, Dr. Thomas's motion for summary disposition, pursuant to MCR 2.116(C)(10), is GRANTED. Pursuant to MCR 2.602(B), a judgment shall enter that is consistent with this *Opinion and Order*.

In compliance with MCR 2.602(A)(3), the Court finds that this decision does not resolve the last pending issue and does not close the case.

IT IS SO ORDERED.

Dated: May 9, 2006

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DONALD G. MILLER  
Circuit Court Judge

CC: Jay G. Yasso  
Bruce A. Shaw  
John A. Klarr  
Scott A. Saurbier  
D. Jennifer Andreou  
Friedrich Dutka, M.D., in pro per

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DONALD G. MILLER  
CIRCUIT JUDGE

MAY 9 - 2006

A TRUE COPY  
CARMELLA SABAUGH, COUNTY CLERK

BY: CA Court Clerk